

Before the  
FEDERAL MARITIME COMMISSION

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PETITION OF THE NATIONAL CUSTOMS BROKERS AND FORWARDERS  
ASSOCIATION OF AMERICA, INC. FOR INITIATION OF RULEMAKING

FMC Docket No. P2-15

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**COMMENTS OF CROWLEY LATIN AMERICA SERVICES, LLC  
AND CROWLEY CARIBBEAN SERVICES, LLC**

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Crowley Latin America Services, LLC and Crowley Caribbean Services, LLC  
(hereinafter referred to jointly as “Crowley”) hereby submit their comments on the petition of the  
National Customs Brokers and Forwarders Association (“NCBFAA”) for initiation of  
rulemaking (the “Petition”).

Interests Of Crowley

Crowley acts as an ocean common carrier in the foreign commerce of the United States.  
As such, it is subject to regulation by the Federal Maritime Commission (“FMC” or  
“Commission”). Crowley provides service to and also competes with non-vessel-operating  
common carriers (“NVOCCs”). Thus, Crowley has a direct interest in the regulatory relief, if  
any, proposed or granted in response to the Petition.

Adoption Of WSC Comments

As an initial matter, Crowley notes that it is a member of the World Shipping Council,  
which is filing comments on the Petition. Crowley fully supports and adopts the comments of

the World Shipping Council. However, it is submitting these individual comments to emphasize the importance of regulatory relief to Crowley.

### The Petition's Request For Regulatory Relief

The Petition requests the initiation of a rulemaking proceeding to adopt changes to the FMC's regulations which would effectively permit NVOCCs to enter into the equivalent of service contracts without filing such contracts with the FMC. This would be achieved by permitting NVOCCs to include terms other than rates in unfiled Negotiated Rate Agreements ("NRAs"). The justification for this request is the "formality, burden and cost" of preparing and filing NVOCC Service Arrangements ("NSAs") and amendments thereto. Petition at p. 3.

### The Need For Regulatory Relief

Crowley shares the Petition's views of the burden involved in publishing tariffs and filing service contracts and amendments. As explained further below, Crowley believes that regulatory relief is needed for both NVOCCs and VOCCs.

The burden of filing service contracts and amendments (as well as NSAs and amendments) is enormous. The following chart, containing figures taken from the FMC's Annual Reports, shows the level of service contract and NSA filing activity over the past three years:

| <u>Year</u> | <u>Service Contracts/<br/>Amendments Filed</u> | <u>NSAs/<br/>Amendments Filed</u> | <u>Total Filings</u> |
|-------------|--|-----------------------------------|----------------------|
| 2012        | 47,664/498,727                                 | 1,435/2,114                       | 549,940              |
| 2013        | 48,802/556,285                                 | 1,635/2,019                       | 608,741              |
| 2014        | 44,208/573,208                                 | 1,538/1,864                       | 620,818              |

Crowley conservatively estimates that it files approximately 1,600 service contracts per year, with an average of four amendments per contract, for approximately 8,000 total annual service contract filings. These filings require approximately 21,800 man/hours per year at a cost to Crowley of more than \$500,000, exclusive of the cost of tariff publication services and software.

In addition to the foregoing costs, countless man/hours are spent chasing customers for signature pages to amendments. Since a rate may only be applied if it is on file at the time the cargo is received, it is imperative that agreed-upon amendments be filed before cargo moving at those rates is tendered to the carrier. However, since many customers do not understand this requirement, they often consider the filing of a contract amendment to be a formality to be handled by the carrier. The result is that signature pages to amendments are not returned promptly and carriers must chase their customers in order to file amendments in a timely manner. In some cases, carriers must delay acceptance of shipments until an amendment is filed or, if the shipper tenders the cargo before it has returned its signature page to an amendment, carrier personnel must spend additional time and resources on further amendments. The result is increased burden and cost, and delays in the movement of cargo.

Meanwhile, according to the Commission's website, the Office of Service Contracts and Tariffs is staffed by a total of four persons. That means each person in that Office would have had to review 425 filings per day, 365 days per year, in order for each 2014 filing to have been reviewed. Clearly, these filings are not being reviewed in real time.

While one might advance reasons as to why service contracts/NSAs and amendments should be filed with the Commission (e.g., use by the Office of Consumer Affairs and Dispute Resolution Services in resolving disputes; use by Bureau of Enforcement in enforcement

matters)<sup>1</sup>, there is no valid regulatory or policy reason to require contract amendments to be filed prior to the movement of cargo. Indeed, as the foregoing explanation of the burden associated with this requirement demonstrates, the burden far outweighs any alleged benefit.

### The Relief Requested By Crowley

In November of 2011, the FMC published its plan for a retrospective review of its regulations and invited comments on same. Comments were filed by a large segment of the ocean common carrier industry in May of 2012, suggesting revisions to certain aspects of the Commission's existing service contract filing regulations to relieve the burdens described above. In July of 2012, representatives of Crowley met with the Commission and its staff to explain the need for regulatory relief. In February of 2013, the Commission unanimously voted to advance review of its existing service contract regulations to 2014, and in August of 2013, the World Shipping Council filed comments on the FMC's proposed strategic plan for FY 2014-2018, once again seeking relief from the existing service contract relief on behalf of ocean carriers. Although the Commission staff has been engaged in an internal review of the Commission's service contract regulations, the Commission has not yet taken any formal action with respect to those regulations.

As explained in the comments of the World Shipping Council, the Petition offers the Commission the opportunity to initiate a rulemaking proceeding that would grant ocean common carriers and NVOCCs relief from the burden of the filing requirements presently applicable to service contracts and NSAs by permitting them to file amendments to their respective contractual arrangements within a specified period after such amendments are agreed upon. This would greatly reduce the burden associated with filing amendments prior to the receipt of cargo,

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<sup>1</sup> Crowley does not concede that these reasons are valid.

virtually eliminate the very common and very real problem of dealing with shipments tendered before an agreed rate can be filed, and make the use of service contracts and NSAs less burdensome for all involved.


For the reasons set forth in the comments filed by the World Shipping Council, Crowley believes that VOCCs and NVOCCs should be treated in like fashion insofar as relief from filing requirements are concerned.

#### Conclusion

The Commission should grant the Petition in part, and initiate a rulemaking proceeding which would amend the FMC's regulations to permit amendments to service contracts and NSAs to be filed within a specified period of time after the parties agree on the amendment.

Respectfully submitted,

CROWLEY LATIN AMERICA SERVICES, LLC  
AND CROWLEY CARIBBEAN SERVICES, LLC

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